IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4520 of 1994
With
SPECIAL CIVIL APPLICATION No. 10065 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARENDRA B. JOSHI - Petitioner(s)
Versus
DEVELOPMENT COMMISSIONER & 2 - Respondent(s)

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Appearance :
SCA No.4520 of 1994
MR PV HATHI for Petitioner(s) : 1,
Ms. Archana Raval, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 – 3.

SCA No.10065 of 1994
Ms.Khyati Hathi for the petitioner
Rule served to respondent No.1
Mr HS Munshaw for respondent No.2

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/04/2006

ORAL JUDGMENT

1. In these petitions, since similar questions arise, they have been heard together and are being disposed of by this common order.

2. Petitioner in Special Civil Application No.4520 of 1994 is an individual who was appointed to the post of Secretary, Jafrabad Nagar Panchayat by resolution dated 30th April 1992. The petitioner took charge of the post in question on 17th May 1992. After one year and five months of this decision, the District Development Officer decided to suspend the resolution of the Nagar Panchayat dated 30th April 1992 by which the petitioner was appointed to the post of Secretary. The petitioner, therefore, challenged the said order dated 31st August 1993 in the present petition. The petitioner also challenged the subsequent order dated 16th March, 1994 passed by the Development Commissioner confirming the order passed by the District Development Officer.

3. Special Civil Application No.10065 of 1994 has been filed by the Jafrabad Nagar Panchayat challenging the very same orders.

4. It is the case of the petitioners that the appointment of the petitioner in Special Civil Application No.4520 of 1994 as Secretary of the Nagar Panchayat suffered

from no illegality and in any case, the decision of the Nagar Panchayat ought to have been reviewed by the authorities within a reasonable time. Further, the resolution of the Nagar Panchayat could not have been suspended, that too permanently without hearing the persons likely to be affected once the resolution was not only brought into effect, but was also implemented and acted upon. Primarily, the petitioners have canvassed the contentions that the decision to suspend the resolution in question was a belated one and that the order was passed by the District Development Officer without following the principles of natural justice. It is contended that the Nagar Panchayat as well as the employee concerned were parties likely to be affected by the decision of the District Development Officer as upheld by the Development Commissioner. It is therefore, submitted that the same could not have been taken without even a semblance of hearing being granted to them.

5. While admitting these petitions, this Court had granted interim protection in favour of the petitioners. The impugned decision of the authorities, therefore, remained suspended during the pendency of the petitions and the petitioner of Special Civil Application No.4520

of 1994 continued to discharge his duties as a Secretary.

6. Though a long time has passed, the respondents have not filed reply controverting the averments made by the petitioners in the petitions. The uncontroverted factual averments, therefore, are that neither of the petitioners, i.e. the employee concerned or the Nagar Panchayat were given any hearing before the District Development Officer decided to permanently suspend the resolution of the Nagarpalika appointing Shri Narendra B. Joshi who is the petitioner in Special Civil Application No.4520 of 1994 as Secretary of the Nagar Panchayat. On this ground alone, I am inclined to allow the petitions.

7. The impugned orders passed by the District Development Officer as upheld by the Development Commissioner is quashed and set aside. The petitions are allowed. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)